

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Sections 11 )  
and 13 of the Cable Television )  
Consumer Protection and )  
Competition Act of 1992 )

Horizontal and Vertical Ownership )  
Limits )

MM Docket No. 92-264

REPLY COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

September 3, 1993

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## Table of Abbreviations

Affiliated Regional Communications, Ltd.	("ARC")
Black Entertainment Television, Inc.	("BET")
Capital Cities/ABC, Inc.	("CC/ABC")
Community Broadcasters Association	("CBA")
Discovery Communications, Inc.	("Discovery")
Encore Media Corporation	("Encore")
E! Entertainment Television, Inc.	("E!")
GTE Service Corporation	("GTE")
Liberty Media Corporation	("Liberty")
Motion Picture Association of America	("MPAA")
National Association of Telecommunication Officers and Advisers, the National League of Cities, the United States Conference of Mayors, and the National Association of Counties	("LG"); ("NATOA") ("NLC")
National Cable Satellite Corporation (CSPAN)	("NCSC")
National Cable Television Association	("NCTA")
Pay-Per-View Network D/B/A Viewer's Choice	("Viewer's Choice")
Rainbow Programming Holdings, Inc.	("Rainbow")
Tele-Communications, Inc.	("TCI")
Time Warner Entertainment Company, L.P.	("TWE")
Turner Broadcasting System, Inc.	("TBS")
Viacom International, Inc.	("Viacom")

## SUMMARY

TWE submits that the Commission should promulgate regulations that:

### I. SUBSCRIBER LIMITS

- impose only national subscriber limits;
- establish a subscriber limit in the range of 30% to 40%;
- exclude areas where effective competition has developed for purposes of measuring compliance with subscriber limits;
- adopt attribution criteria that focus on management control;
- grant the Commission sole enforcement authority, without a certification requirement;
- adopt a waiver for MSOs who commit de minimis violations;
- establish a review of the subscriber limits by the Commission every five years;

### II. CHANNEL OCCUPANCY LIMITS

- establish a threshold of 54 or, at most, 75 uncompressed channels beyond which the channel occupancy limits no longer apply;
- exclude non-video services from application of the channel occupancy limits;
- exclude pay-per-view from application of the channel occupancy limits;
- adopt reasonable channel occupancy limits permitting a cable operator to devote at

least 40% of its activated channels to affiliated programming;

- apply the channel occupancy limits only to programming services affiliated with the particular cable operator;
- take account of any broadcast, PEG and leased access channels in the calculation;
- adopt attribution criteria based on management control; alternatively, modify the broadcast attribution criteria to increase the 5% attribution threshold to 25% where multiple MSOs have investments in a program service;
- grandfather existing vertically integrated relationships which exceed the channel occupancy limits as of the date of promulgation of final rules;
- grant the Commission the sole authority to enforce the channel occupancy limits on a complaint basis only;
- create an exception for local and regional services such that channel occupancy limits apply only to programming services that are distributed nationally;
- exempt vertically integrated programming services that have achieved a significant level of distribution among non-affiliated operators from the channel occupancy limits; alternatively, exempt new programming services from the limits;
- eliminate the application of channel occupancy limits in communities where effective competition exists.

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REPLY COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

Preliminary Statement

Time Warner Entertainment Company, L.P. ("TWE"), is majority owned and fully managed by Time Warner Inc. ("TWI"), a publicly traded company. TWE consists principally of three unincorporated divisions: Time Warner Cable ("TWC"), which operates cable systems; Home Box Office ("HBO"), which wholly owns two premium television services (the HBO service and Cinemax), and is 50% owner of one non-premium service (Comedy Central); and Warner Bros., which produces and distributes motion pictures and television programs. TWE and TWI also directly and indirectly hold minority interests in various non-premium cable programming services other than those owned by HBO.

TWE submits these reply comments in response to Sections IV and V (relating to subscriber limits and channel

occupancy limits) of the Commission's Report and Order and Further Notice of Proposed Rule Making ("FNPRM"), adopted June 24, 1993, and released July 23, 1993, regarding its rule-making responsibilities under Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), which amend Section 613 and add Section 617, respectively, to the Communications Act of 1934, 47 U.S.C. §§ 533, 537.

TWE is the plaintiff in a lawsuit pending in Federal District Court in Washington, D.C., in which it takes the position that Section 11 and other provisions of the 1992 Cable Act violate its rights under the First Amendment to the United States Constitution. See Time Warner Entertainment Company, L.P. v. FCC, Civil Action No. 92-2494 (D.D.C. filed Nov. 5, 1992). TWE submits these comments without prejudice to its constitutional claims and arguments.

#### I. SUBSCRIBER LIMITS

##### A. The Majority of Commenters Support a Subscriber Limit Higher than the Commission's 25% Proposal.

Although the Commission has tentatively proposed a horizontal ownership limit prohibiting any one entity from owning cable systems that in the aggregate serve more than 25% of all cable homes passed nationwide, FNPRM ¶ 147, a

majority of commenters agree that a subscriber limit above 25% is appropriate. TWE II at 6-9; TCI II at 10-18; Liberty II at 8-12; NCTA II at 7-9. 1/ Like TWE, a number of commenters point out that antitrust analysis, marketplace experience, and other provisions of the 1992 Cable Act justify a subscriber limit that is higher than the proposed 25%. See NCTA II at 6-9; TCI II at 10-18; Liberty II at 8-12. 2/

The MPAA and LG 3/ agree with the Commission's tentative proposal to adopt a 25% subscriber limit. MPAA II at 2-4; LG II at 14. Without any evidence or legal support, LG asserts that "an MSO that were to reach over 25% of the nation's cable homes would wield excessive market power". LG II at 14. As discussed at length in TWE's initial

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1/ Comments submitted to the Commission are cited by giving the submitter's name in abbreviated form. For ease of reference, a table showing the abbreviations of various submitters' names that are used herein is included after the table of contents. Comments dated August 23, 1993 that were submitted in response to the FNPRM are indicated by the designation "II". Comments dated February 9, 1993 that were submitted in response to the Commission's initial NPRM are indicated by the designation "I".

2/ Commenters unanimously support the Commission's proposal to adopt exclusively national subscriber limits. FNPRM ¶ 137; TWE II at 3-6; Liberty II at 9; NCTA II at 3-6; see e.g. TCI II at 11; CC/ABC II at 1; MPAA II at 2; LG II at 14.

3/ NATOA supports a 15% limit, and NLC supports a 25% limit. LG II at 14, n.10.

Comments, antitrust analysis and empirical data demonstrate that it is unlikely that a cable operator with 30% to 40%, measured either on the basis suggested by TWE at n.4 below or as a percentage of all cable homes passed, would be able to adversely effect competition in the distribution of programming. TWE I at 21-29.

The MPAA opposes a subscriber limit higher than 25%, arguing that "greater concentration" in the cable industry is "not a precondition for cable operator investment in new programming services or deployment of advanced cable technologies". MPAA II at 3 (footnotes omitted). Although it is true that an operator does not need to be at the proposed 25% limit in order to be able to make investments in programming and technological development, the Commission and Congress nonetheless recognized the immense benefits that a large subscriber base can confer upon a programmer in the form of increased distribution, enhanced promotional opportunities, and transactional efficiencies. See TWE I at 6, citing the Commission's 1990 Report to Congress, Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, 5 FCC Rcd. 4962 (1990); and House Committee on Energy and Commerce, H. R. Rep. No. 628, 102d Cong., 2d Sess. 43 (1992).

The MPAA also asserts that the risk of foreclosure resulting from vertical integration is "far, far greater" for unaffiliated programmers than the risk of foreclosure to cable-affiliated programmers resulting from the must-carry rules. MPAA II at 4. The MPAA does not offer any empirical evidence in support of this assertion. Further, as the MPAA states, "must carry signals displace cable services on systems with limited channel capacity". Id. This displacement affects a cable operator's discretion to select both affiliated and unaffiliated cable programming services.

B. The Calculation of the Subscriber Limits Should Not Include Areas Where Effective Competition Has Developed.

TWE concurs with the Commission's proposal that the calculation of subscriber limits should not include areas where effective competition has developed. FNPRM ¶ 152; TWE II at 10-11. 4/ TWE believes that "effective

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4/ TCI, Liberty, LG, NCTA and the MPAA concur with the Commission's proposal to measure subscriber limits as a share of homes passed rather than as a share of cable subscribers. FNPRM ¶ 151; TCI II at 10; Liberty II at 12; LG II at 14; NCTA II at 9; MPAA II at 3. TWE continues to believe that the statutory objectives would be better served by the alternative measure it earlier proposed, which would measure an operator's cable subscriber as a percentage of subscribers to cable and non-cable multichannel video programming distributors. See TWE I at 18-21; TWE Reply Comments at 5-6; TWE II at 9-10; NCTA II at 9, n.20. TWE concurs with the Commission, however, that a homes passed standard is preferable to a standard based solely on a share of cable subscribers.

competition" should be defined as it is under Section 3 of the 1992 Cable Act, 47 U.S.C. § 543, including the "under 30%" provision. See TWE II at 10-11.

The MPAA and LG oppose the Commission's proposal. MPAA II at 5; LG II at 14-15. The MPAA suggests that an operator who achieves a subscribership of less than 30% necessarily offers bad service to its customers. MPAA II at 5. As TWE noted, however, where an operator achieves subscribership of less than 30%, it is at least as plausible that the operator does face competition from other multichannel distributors, even if the other definitions of "effective competition" are not met. TWE II at 11. Moreover, an operator with a penetration level below 30% would lack any meaningful ability to impede distribution of programming services. Id.

LG and the MPAA argue that because the subscriber limits were enacted to address potential foreclosure of programmers on a nationwide basis, the limits should apply even where effective competition exists. LG II at 14-15; MPAA II at 5. As TWE has noted, however, in an area where effective competition exists, there is an alternative outlet for program distribution and any potential problem of foreclosure is alleviated.

C. The Commission's Attribution Standards Should Focus on Management Control.

Two commenters, the MPAA and CC/ABC, support the Commission's proposal to adopt the attribution criteria contained in Section 73.3555 of the Commission's Rules. FNPRM ¶ 156; MPAA II at 2; CC/ABC II at 1-2. TWE continues to believe that the attribution standard (both for subscriber limits and for channel occupancy limits) should focus on the ability of a cable operator to control the programming decisions of a cable system. A 5% attribution standard is so low that it is not, in fact, a good proxy for "actual working control", which is what the broadcast standard seeks to measure. See TWE I at 30-31; TWE II at 12-13; see also NCTA II at 11. TWE believes that 25% is the minimum ownership level at which the statutory concerns could even be implicated.

D. The Commission Should Enforce the Limits at Its Own Initiative, Make Provisions for Waivers, and Review the Limits Every Five Years.

TWE, NCTA and the MPAA concur with the Commission's proposal to enforce the subscriber limits at its own initiative. TWE II at 14; NCTA II at 12; MPAA II at 6. The MPAA argues that a system of certification applicable to cable operators who reach 20% or more of homes passed upon their transfer or assignment of a cable system

is necessary. MPAA II at 6. As TWE explained, however, industry publications are adequate to alert the Commission if any MSO approaches the subscriber limit, making a certification system an unnecessary burden. TWE II at 14; NCTA at 12.

All commenters who address the subject agree that a waiver for de minimis violations should be obtainable. TWE II at 14; MPAA at 6; LG at 15; NCTA II at 12. Finally, TWE, NCTA and the MPAA concur with the Commission's proposal to review the subscriber limits every five years. FNPRM ¶ 166; TWE II at 15; NCTA II at 13; MPAA II at 7.

## II. CHANNEL OCCUPANCY LIMITS

### A. Virtually All Commenters Agree that Emerging Technologies Justify an Exemption for Systems with Expanded Channel Capacity.

Although the Commission has indicated that it is in favor of establishing a channel capacity threshold beyond which the channel occupancy limits would no longer apply, it believes it would be premature to do so at this time. FNPRM ¶ 226. Numerous commenters disagree with the Commission's proposal to defer establishing such a threshold. TWE II at 21-23; E! II at 3-4; Discovery II at 2-5; Viacom II at 3-5; TBS II at 7; GTE II at 8; Liberty II at 16; NCTA II at 17. Like TWE in its initial comments, E!, Discovery and Viacom urge the Commission to set the ceiling at

54 channels. TWE I at 57; E! II at 3-4; Discovery II at 3-5; Viacom II at 3-5. While TWE agrees that 54 channels is the proper place to draw the line for purposes of a channel capacity threshold, it also believes that any residual concern about discrimination against unaffiliated programmers would have no force at the 75 channel level. As previously noted, any cable system possessing a capacity of greater than 75 channels is necessarily employing some form of advanced technology. TWE II at 22-25.

Only the MPAA and CBA supported deferring the establishment of a channel capacity threshold until a later date. Both the MPAA and CBA argue that the technological development of increased capacity is in experimental phases and, as a result, setting a threshold would be premature. MPAA II at 9; CBA II at 3-4.

These commenters, TWE submits, do not appreciate the rapid pace at which cable technology is developing. As TWE stressed in its most recent Comments, it is investing in advanced cable technology now and is planning massive investments, amounting to billions of dollars, over the next few years. TWE II at 17-18. The submissions of other commenters showed that TWE is not the only industry participant that is making major commitments to advanced technology at the present time. TCI, Viewer's Choice,

Discovery and Viacom are all currently investing in the development of advanced program systems that will complement emerging multi-channel technologies. TCI II at 42-50; Viewer's Choice II at 9; Discovery II at 4; Viacom II at 4, n.2. These innovative offerings are not laboratory experiments. Rather, they are concrete business plans that are being implemented now, and failure to provide for them will inevitably stifle technological innovation.

Only LG flatly disagreed with the Commission's proposal to establish a threshold, arguing that the limits are necessary to prevent anticompetitive behavior regardless of channel capacity. LG II at 11. LG overlooks the fact that, as the Commission itself concluded, expanded channel capacity "will most likely eliminate the need" for channel occupancy limits. FNPRM ¶ 226. Moreover, as E! explained, with expanded channel capacity there is less need "to set channels aside; the incentive will be to find the most attractive programming available to fill the channels, regardless of ownership". E! II at 3-4. Accordingly, TWE urges the Commission to reject LG's approach and establish a ceiling of 54 or, at most, 75 uncompressed channels, above which its channel occupancy limits would not apply.

B. TCI's Proposal Based on Bandwidth Would Better Accommodate Technological Developments, But Must Be Modified To Take Account of the Full Range of Possible Innovation.

In response to the Commission's inquiry regarding TCI's suggestion that channel occupancy limits be determined by measuring bandwidth rather than traditional channels, FNPRM ¶ 183, almost all commenters support TCI's proposal. TCI II at 36-50; TBS II at 4; Liberty II at 15-16; see also TWE II at 23-25. 5/ As Liberty explained, such an approach "will promote the development and deployment of digital compression and other new technologies, encourage cable investment in new programming services, and increase the cable system capacity available for new or unaffiliated programming services". Liberty II at 16.

As previously discussed, TWE believes that TCI's proposal is a positive step, but may have unintended adverse consequences for the use of digital switching technology. TWE II at 23-25. As TWE explained, a modified version of TCI's proposal will accommodate both digital compression and digital switching technology. TWE II at 24. Accordingly, TWE urges the Commission to apply the proposed 40% channel

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5/ Only LG opposed TCI's bandwidth proposal, asserting that the statute mandates that the limits be measured based on channels. LG II at 6, n.4. As TCI explained, however, the statute defines the term "channel" in terms of bandwidth. TCI II at 38-46.

occupancy limit to the first 54 (or, at most) 75 channels of an operator's "uncompressed" channel capacity. This approach will ensure that the development of all forms of technological innovation is encouraged.

C. The Commission Must Exempt Non-Video Services and Pay-Per-View Offerings from the Channel Occupancy Limits.

Commenters unanimously concur that the Commission should not apply the channel occupancy limits to the use of cable capacity to provide information and communications services other than those of video programmers. TWE II at 26-27; GTE II at 8; Viacom II at 5, n.2; NCTA II at 15; Liberty II at 16. Section 11(c) authorizes the Commission to limit the extent to which system capacity can be occupied by "a video programmer in which a cable operator has an attributable interest". 47 U.S.C. § 533(f)(1)(B) (emphasis added). As TWE and Viacom pointed out, the statute authorizes regulation of channels used by a "video programmer", not those used for nonvideo services. TWE II at 26-27; Viacom II at 5, n.2. Similarly, as we showed previously, although pay-per-view constitutes "video programming", it is not the offering of a "video programmer" as that term is commonly understood. See TWE II at 26-27.

Those commenters who addressed the subject agreed with TWE that pay-per-view should not be subject to the

channel occupancy limits. TWE II at 25-30; Viewer's Choice II at 6-9; NCTA II at 22-23. Echoing TWE's concerns, Viewer's Choice noted that application of the limits to pay-per-view could thwart its expansion plans, which are intended to take advantage of "increased channel capacity and interactive technology". Viewer's Choice II at 4. Like TWE, Viewer's Choice has made large investments in new technologies to expand viewing options. Viewer's Choice considers itself "a stepping-stone to more sophisticated and consumer-friendly video on-demand offerings". Viewer's Choice II at 7. Because pay-per-view is not the offering of a "video programmer" and is crucial to the next wave of cable technology, it should be exempted from application of the channel occupancy limits.

D. Most Commenters Concur that the Commission Should Adopt a Channel Occupancy Limit that Permits a Cable Operator To Devote at Least 40% of Its Activated Channels to Affiliated Programming Services.

There was virtual unanimity among the commenters that 40% of all activated channels is the minimum acceptable level for a channel occupancy limit. TCI II at 24-31; E! II at 3; TBS II at 6; Rainbow II at 4; NCTA II at 20; see also Viacom II at 2 (proposing a limit of 50% or higher); LG II

at 6 (suggesting that a 40% limit is appropriate unless the Commission adopts numerous exceptions). 6/

Only the MPAA suggested a limit lower than the proposed 40%. In conjunction with a 15% attribution standard, the MPAA argues that the Commission should impose a 20% channel occupancy limit. MPAA II at 7-9. The MPAA's proposal should be rejected.

The MPAA attempts to support its proposal by use of hypothetical TCI cable systems, arguing that a 40% channel occupancy limit coupled with extensive must carry, PEG and leased access requirements will leave little or no "room" for unaffiliated cable services, thus diminishing diversity. MPAA II, Attachment A. The MPAA's analysis is flawed. In the first place, must carry, PEG and leased access provide ample diversity of programming sources. Nothing in the 1992 Cable Act indicates any congressional preference for unaffiliated programmers over access and

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6/ In this connection, there is universal agreement that the Commission should apply the channel occupancy limits only to programming services affiliated with the particular cable operator. FNPRM ¶ 180; TWE II at 23, n.4; Viacom II at 7-8; Discovery II at 5; Encore II at 10-12; Liberty II at 13; Rainbow II at 9; NCTA II at 13-14. Further, all commenters, except LG, concur that PEG, leased access and broadcast channels should not be subtracted from the base against which the channel occupancy limits apply. TWE II at 26, n.6; MPAA II at 9; TBS II at 5; Viacom II at 8; Liberty II at 13-14; Discovery II at 5-6; LG II at 7; NCTA II at 14-15. Accordingly, TWE urges the Commission to adopt these two proposals.

broadcast program sources. Second, the MPAA's examples suppose that an operator will mechanically prefer services in which it has an attributable ownership interest over any and all unaffiliated program services. Such an assumption is completely unwarranted. Cable operators are not free to ignore subscriber preferences, and in fact no single cable operator has an interest in more than 9 of the 20 most popular services. See NCTA, Cable Television Developments at 16-A-17-A (May 1993).

E. The Commission's Attribution Criteria Should Be Sufficiently Flexible to Avoid Penalizing Investment in New Programming.

Several commenters agree with the Commission's proposal to apply the broadcast attribution criteria contained in Section 73.3555 of its rules for purposes of the channel occupancy limits. GTE II at 5 (arguing that the broadcast standard also should be applied to video dialtone); BET II at 3; E! II at 4. 7/

Like TWE, Viewer's Choice, NCTA and Liberty continue to support an attribution standard based on actual management control. TWE II at 32; Viewer's Choice II at 9-

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7/ One commenter, CBA, proposed that the stricter video dialtone attribution standard should be applied for the purposes of the channel occupancy limits. CBA II at 2-3. TWE believes that such strict attribution criteria are wholly inappropriate in this context. See TWE Reply I at 34-25.

11; NCTA II at 18; Liberty II at 17. Liberty and NCTA also support the position proposed by TWE that the Commission should raise the equity threshold (if the broadcast standard is imposed) where multiple MSOs each hold a minority interest in a programming service. <sup>8/</sup> TWE II at 32; Liberty II at 19; NCTA II at 19. TWE urges the Commission to raise the equity threshold to 25% where several MSOs hold a minority interest in a programmer to ensure that investment in new programming is encouraged. Both Rainbow and the MPAA recommend that the Commission adopt specific percentage levels, 10% and 15% respectively, at which a cable operator's interest in a programming service should be attributable. Rainbow II at 3-6; MPAA II at 7.

TWE submits that the Commission should adopt a flexible attribution standard that will not create disincentives to investment in new programming. TWE believes that a management control standard would best serve the objectives of Congress. Alternatively, as with the subscriber limits, TWE believes that 25% is the smallest ownership level at which any statutory concern could even conceivably be implicated. If the Commission does adopt the

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<sup>8/</sup> Liberty also asserts that, in the event that the broadcast standard is adopted, the equity threshold should be raised to at least 10%. Liberty II at 18, n.3.

broadcast attribution criteria, TWE urges the Commission to adopt flexible exceptions 9/ to avoid penalizing investment.

F. Local and Regional Services Should Be Excepted from the Channel Occupancy Limits.

An overwhelming majority of commenters support the Commission's proposal to except local and regional services from the channel occupancy limits. FNPRM § 219; TWE II at 33-34; Liberty II at 14-15; TBS II at 7; Rainbow II at 9-10; Viacom II at 8-9; ARC II at 1-8; TCI II at 33-34; NCTA II at 21-22. Commenters agree that local and regional services should be encouraged because such programming responds to particular needs and tastes of local communities and fulfills Congressional objectives.

Only the MPAA and LG oppose the Commission's proposal to except local and regional services. MPAA II at 10; LG II at 9-10. The MPAA argues that the exception should be rejected because must-carry already ensures the availability of local programming. MPAA II at 10. 10/ As

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9/ TWE continues to support an exception for services that are widely offered by unaffiliated operators. See pp. 19-20 infra; see also TCI II at 21-24 (discussing the compelling need to adopt the broadcast attribution exceptions in the event that the Commission adopts that standard).

10/ /The MPAA also argues against an exception for local and regional services on the ground that determining whether a particular service is sufficiently "local or regional" in character would require the Commission to make

the Commission noted (FNPRM ¶ 219, n.218), however, a "primary objective" of federal regulation is "the local origination of programming", 1992 Cable Act § 2(a)(10), and broadcast television is not the only (or by any means the most effective) medium by which this objective is carried out. LG opposes any exemption for local services, arguing that they are often owned by "large national conglomerates", and it urges that only services operating on a non-commercial, non-profit basis should be excepted. LG II at 9-10. LG completely overlooks the benefits conferred by vertically integrated local and regional programming services, which not only respond to the tastes of local audiences, but also provide "opportunities for exposure and community outreach to local schools, athletic conferences and other community organizations". ARC II at 5. Accordingly, TWE urges the Commission to provide an exception to the channel occupancy limits for local and regional services.

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unconstitutional content-based determinations. MPAA II at 10. TWE believes that the entire scheme of subscriber and channel occupancy limits, like the must carry regime and several other portions of the Act, is unconstitutional on that and other grounds. See p. 2, supra. Assuming arguendo, however, that the statute is constitutional as a general matter, TWE believes that the First Amendment issue MPAA raises could be resolved by defining the exempted services as those that are not distributed nationally.

G. TWE Continues to Believe That an Exemption for Programming Services That Have Demonstrated Their Popularity Among Unaffiliated Cable Operators Is Necessary to Preserve Incentives to Invest in Programming.

TWE continues to support an exemption for programming services that are widely distributed among unaffiliated operators as a more viable approach to ensuring that investment in new, fledgling services is not discouraged. TWE II at 34-36. Viacom also advocates such an approach. Viacom II at 5-7. Several commenters also support an exemption for new services as a means to encourage investment. Rainbow II at 6-9; Viacom II at 7; Liberty II at 19 (urging the Commission to adopt a higher attribution threshold for new services with several minority investors); E! II at 4-6 (proposing that the Commission raise the attribution threshold for new programming services and for services that produce original programming). <sup>11/</sup>

Both the MPAA and LG oppose an exception for new programming services. MPAA II at 9-10; LG II at 11. The MPAA asserts that the disincentive to invest in a service created by knowing that divestiture will be required within

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<sup>11/</sup> In this connection, NCSC urges the Commission to create an exemption from the channel occupancy limits for non-profit, non-stock services. NCSC II at 2-8. Similarly, GTE proposes that the Commission adopt a waiver policy for local exchange telephone companies that seek to provide new video programming services in their franchised areas. GTE II at 7.